

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

May 24, 2002

IN RE:

PETITION OF AQUA UTILITIES CORPORATION, INC.  
FOR APPROVAL OF DEBT ISSUANCE

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DOCKET NO.  
02-00388

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ORDER DENYING PETITION

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This matter came before the Tennessee Regulatory Authority (the "Authority") at a regularly scheduled Authority Conference held on April 30, 2002 upon *the Petition of Aqua Utilities Company, Inc. for Approval of Debt Issuance*.

**Requirement of and Legal Standard for Approval by the Authority**

Tenn. Code Ann. § 65-4-109 requires a public utility to obtain Authority approval before issuing any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof. This section requires a determination by the Authority that the proposed issue, sale, and delivery is in accordance with the law and its purpose meets with the Authority's approval.

**The Petition**

Pursuant to Tenn. Code Ann. § 65-4-109, Aqua Utilities Company, Inc. ("Aqua") requests approval of a \$475,000 loan for which one hundred percent (100%) of Aqua's capital stock, currently held by James E. Clausel, is pledged as collateral. Aqua was prompted to file this *Petition* after it was found that Aqua had failed to submit the loan to the Authority for

approval and thus had not complied with Tenn. Code Ann. § 65-4-109. This finding was made in a compliance audit conducted by the Authority staff, the findings of which were adopted by the Authority at a regularly scheduled Authority Conference held on December 18, 2001. The Authority's adoption of these findings is reflected in an Order issued on January 28, 2002 in Docket No. 00-01105.

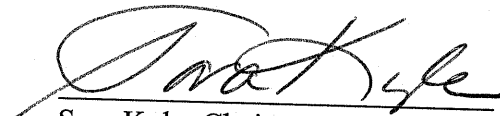
According to the *Petition*, the \$475,000 loan was taken in order to purchase Aqua. Based solely upon this representation, the proposed use of the funds appears to be proper under Tenn. Code Ann. § 65-4-109. Aqua's utility plant was initially donated by a developer and thus has a zero rate base. A "Stock Pledge and Security Agreement" filed with the *Petition* indicates, however, that Mr. Clausel's Aqua stock is pledged as collateral for the \$475,000 loan and, in addition, a \$1,663,750 loan. This second loan was not used for the purchase of Aqua. Furthermore, both loans were made to the Montana Land Company, which is also owned by Mr. Clausel but is not affiliated with Aqua.

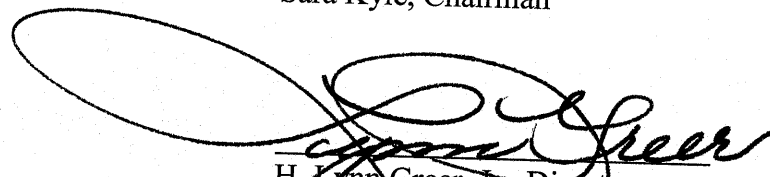
### **Findings**

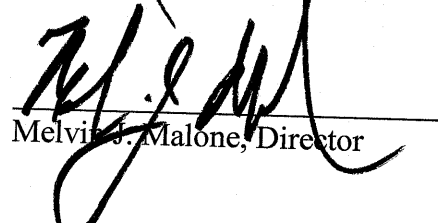
At the April 30, 2002 Authority Conference, the Directors of the Authority voted unanimously to deny Aqua's *Petition*. Aqua's stock has been pledged as collateral for a \$475,000 loan for the purchase of Aqua as well as a second loan of \$1,663,750 that was not used for this purpose. Furthermore, both loans were made to the Montana Land Company, not to Aqua. As such, the purpose of the loans do not meet with the Authority's approval, as provided in Tenn. Code Ann. § 65-4-109. The Directors emphasized that should either loan go into default, the holder of the note, Columbus Bank and Trust Company, will be required to take control of Aqua and will be subject to all rules and regulations of the State of Tennessee and of the Tennessee Regulatory Authority with regard to the operation of a public utility.

**IT IS THEREFORE ORDERED THAT:**

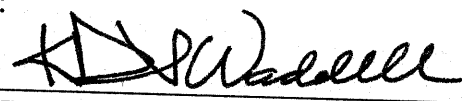
1. The *Petition* of Aqua Utilities Company, Inc. for approval of debt issuance, as described in the *Petition* and this Order, is denied;
2. Any party aggrieved by the Authority's decision in this matter may file a *Petition* for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary